

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Cablevision of Rockland/Ramapo Inc.)	CSR-6537-E
)	
Montvale, New Jersey)	
)	
CSC TKR, Inc. d/b/a Cablevision of)	CSR-6670-E
Elizabeth)	
)	
Elizabeth, New Jersey)	
)	CSR-6671-E
Cablevision of Warwick LLC)	
)	
West Milford, New Jersey)	
)	
Petitions for Determination of Effective)	
Competition)	

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2007

Released: June 26, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Cablevision of Rockland/Ramapo Inc., CSC TKR, Inc. d/b/a Cablevision of Elizabeth, and Cablevision of Warwick LLC (collectively “Cablevision”) have filed with the Commission petitions pursuant to Sections 76.7, 76.905 and 76.907 of the Commission’s rules for a determination that Cablevision’s cable systems serving Montvale, Elizabeth and West Milford, New Jersey (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation.¹ Specifically, Cablevision asserts that the competing provider test is met in Montvale, Elizabeth and West Milford.² In addition, Cablevision alternatively asserts that the Local Exchange Carrier (“LEC”) test is met in West Milford.³ The New Jersey Board of Public Utilities (“BPU”), the certified local franchise authority in New Jersey, and the New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) filed oppositions against the petitions and Cablevision filed a reply.⁴ In addition, the Ratepayer Advocate filed a Motion for Discovery as well as additional comments in response to a

¹ 47 C.F.R. §§ 76.7, 76.905, 76.907; 47 U.S.C. § 543(a)(1).

² Petition at 2; *see also* 47 U.S.C. § 543(1)(1)(B)(i)(ii); 47 C.F.R. § 76.905(b)(2).

³ *Id.*; *see also* 47 U.S.C. § 543(1)(1)(D); 47 C.F.R. § 76.905(b)(4).

⁴ The BPU and the Ratepayer Advocate requested extensions of time for the filing of comments or oppositions in this matter. The BPU and the Ratepayer Advocate state that Cablevision consented to these requests. Cablevision also filed a request for an extension of time to file its reply. Cablevision states that both the BPU and the Ratepayer Advocate consented to its request. The requests for extensions of time are granted.

later issued Public Notice involving the communities of Elizabeth and West Milford.⁵ Cablevision filed a reply to those comments.⁶ We grant the petitions finding that the Cablevision cable systems are subject to effective competition in the noted Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁷ as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.⁸ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁹

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPDs"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.¹⁰ Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹¹ The two DBS providers' subscriber growth reached approximately 26.1 million as of June, 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.¹² In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the Communities at issue are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's

⁵ Due to filing fee issues, the Commission issued an additional Public Notice in this case assigning two additional CSR numbers – CSR-6670-E for Elizabeth and CSR-6671-E for West Milford. Filings for each community required separate petitions and separate filing fees because each of the cable systems involved are not physically integrated systems. The original CSR number assigned to the case – CSR-6537-E – now only applies to Montvale. The Ratepayer Advocate states that it did not completely understand the reason for the issuance of a new Public Notice, yet believed it necessary to file additional comments. See Comments of the New Jersey Division of the Ratepayer Advocate in Opposition to the Petitions for a Declaration of Effective Competition at 1 ("Ratepayer Advocate Comments").

⁶ Cablevision filed its reply comments arguing that the Ratepayer Advocate's Comments should be rejected as procedurally defective. Cablevision also responded substantively to the Comments. Because petitions for effective competition are not placed on Public Notice unless all regulatory fees have been paid and because of the confusion surrounding the issuance of two Public Notices in the proceeding, we will consider the additional Ratepayer Advocate Comments and Cablevision's reply pleading filed in this proceeding in the interest of compiling a complete record in this matter.

⁷ 47 C.F.R. § 76.906.

⁸ 47 C.F.R. § 76.905.

⁹ See 47 C.F.R. §§ 76.906 & 907.

¹⁰ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

¹¹ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹² *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.¹³ We further find that the Cablevision cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.¹⁴ Cablevision has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities; that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers; and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁵ Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Cablevision sought to determine the competing provider penetration in the Communities by using a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a Zip+4 basis.¹⁶ Cablevision asserts that it is the largest MVPD in the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹⁷ Cablevision asserts that the subscriber base for the DBS providers in Montvale is 15.34 percent; Elizabeth 17.39 percent; and in West Milford 15.69 percent.¹⁸

5. In opposition regarding the second prong of the test, BPU alleges that Cablevision has not met its burden of demonstrating that the number of households subscribing to DBS providers exceeds 15 percent of the households in the Communities.¹⁹ BPU argues that Cablevision cannot meet its burden because it uses data that is not “contemporaneous with a nexus in time” and does not allow for a true analysis of the competitive nature of the franchise areas.²⁰ BPU asserts that there is a mismatch of data because Cablevision, in order to show satellite penetration, uses 2000 Census data coupled with SBCA Zip code subscriber information based on data current through November 30, 2004.²¹ BPU maintains that it does not question whether 2000 Census data can be used as a starting point to determine the number of households in the franchise areas, but rather whether a cable operator should be required to provide the actual number of households in the affected areas at the time of filing a petition.²² BPU argues that the use of 2000 Census data in conjunction with DBS subscriber information that is nearly five years older

¹³ See 47 C.F.R. § 76.905(g).

¹⁴ Cablevision Petition at 4, 13 and Exhibits 4 & 5.

¹⁵ *Id.* at 4, 12 and Exhibits 1 & 2.

¹⁶ *Id.* at 6, 14 and Exhibits 7 & 8.

¹⁷ *Id.* at 5, 14 and Exhibit 1. Cablevision provides the Declaration of Elizabeth Losinski, Vice President of Cable Policy for Cablevision Systems Corporation at ¶ 5 stating that Cablevision is the largest MVPD in the Montvale, Elizabeth and West Milford communities (January 31, 2005).

¹⁸ *Id.* at 6 (Table I) and 15 (Table II); *see also* Exhibit 6 (U.S. Census Bureau information) and Exhibit 7 (SBCA’s Effective Competition Tracking Report); for Montvale 385 DBS subscribers ÷ 2,509 Montvale 2000 Census Households = 15.34%; for Elizabeth 7,040 DBS subscribers ÷ 40,482 Elizabeth 2000 Census Households = 17.39%; for West Milford 1,255 DBS subscribers (+ 187 Local Exchange Carrier (“LEC”) Hometown Online subscribers) (Total 1,442) ÷ 9,190 West Milford 2000 Census Households = 15.69%.

¹⁹ BPU Opposition at 4.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.* at 4.

cannot be used to make an appropriate determination of effective competition.²³ BPU argues that the Commission should apply a “complete when filed” rule and dismiss the petitions; or alternatively, provide an opportunity for discovery and hearing in this matter.²⁴

6. The Ratepayer Advocate also argues that Cablevision’s 2000 Census household data is deficient because it is not the most recent data available and, therefore, the competing provider test cannot be satisfied in this case.²⁵ The Ratepayer Advocate asserts that the number of households in the municipalities has increased and states that its data is based on information obtained from the municipalities and from information from an independent third party demographic entity, Claritas, Inc.²⁶ The Ratepayer Advocate asserts that the data provided by Claritas, Inc., described as a source of marketing information about American consumers and businesses, confirms growth in the Communities thereby requiring an upward adjustment to the 2000 Census figures.²⁷

7. In the Township of West Milford, the Ratepayer Advocate states that the number of new households since 2000 is 519, resulting in a total of 9,709 households in 2004.²⁸ Accordingly, the Ratepayer Advocate asserts that with this household adjustment, competing provider subscribership drops to 14.85 percent.²⁹ The Ratepayer Advocate also states that the Borough of Montvale reports that there are 2,643 households located there and; therefore, the competing provider subscribership stands at 14.56 percent.³⁰

8. With regard to the City of Elizabeth, the Ratepayer Advocate states that it has received information from the City regarding current households as well as satellite penetration. The Ratepayer Advocate asserts that between 2000 and 2004, Elizabeth households increased by a total of 1,721 new households.³¹ In addition, the Ratepayer Advocate states that the City conducted a visual survey of three Census tracts deemed to be representative of the City as a whole and determined that the overall satellite penetration for these tracts was 9 percent.³² The Ratepayer Advocate asserts that there are many homes

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ Ratepayer Advocate Opposition at 4.

²⁶ *Id.* at 4-6 and Certification in Support of Comments on Behalf of The New Jersey Division of The Ratepayer Advocate by Jose Rivera-Benitez, Esq., Assistant Deputy Ratepayer Advocate (“Rivera-Benitez Certification”).

²⁷ Ratepayer Advocate Opposition at 12 and Exhibit E.

²⁸ Ratepayer Advocate Opposition at 6.

²⁹ *Id.* and Rivera-Benitez Certification at ¶ 3. In support, the Certification refers to Exhibit A (March 11, 2005 Letter from Gale Barth, C.T.A., Deputy Tax Assessor to Jose Rivera-Benitez regarding new homes constructed in West Milford since 2000). In order to reach its figure, the Ratepayer Advocate combined the West Milford DBS subs. (1,255) with the LEC Subs. (187) for a total of $1,442 \div 9,709 = 14.85\%$.

³⁰ *Id.* and Rivera-Benitez Certification at ¶ 4. In support, the Certification refers to Exhibit B (March 9, 2005 Letter from Michael Leposky, Montvale Assessor to Jose Rivera-Benitez estimating the number of households in the Borough). Thus, given $385 \text{ DBS subs.} \div 2,643 \text{ estimated Montvale households} = 14.56\%$

³¹ *Id.* and Rivera-Benitez Certification at ¶ 5. Exhibit C contains a March 10, 2005 Letter from Rocco DiPaola, Second Assistant City Attorney, City of Elizabeth to Henry Ogden, Ratepayer Advocate with a list compiled by the Construction Bureau of the City of Elizabeth of new residential Certificate of Occupancies issued from 2000-2004.

³² *Id.* and Rivera-Benitez Certification at ¶ 5. Exhibit D contains a March 24, 2005 Letter from Oscar Ocasio, Planning & Community Development for the City of Elizabeth to Jose Rivera Benitez regarding the results of the visual survey performed.

with more satellite dishes than there are households at the same location.³³ The Ratepayer Advocate states that approximately 53 homes should be added to what it calls the denominator of the competitive provider test for the tracts surveyed in Elizabeth.³⁴ The Ratepayer Advocate asserts more information from DBS providers is needed to permit analysis of the DBS penetration rate because many households have more than one dish.³⁵

9. The Ratepayer Advocate, along with the BPU, requests that the Commission apply a “complete when filed” rule and dismiss the petition.³⁶ In the event that the Commission does not dismiss the petition, the Ratepayer Advocate requests that the Commission grant its Motion for Discovery and requests that a new pleading cycle be established.³⁷

10. In reply, Cablevision argues that the Commission’s rules support its reliance upon the most recent Census data in order to measure homes passed in the Communities.³⁸ Cablevision also argues that the Ratepayer Advocate and the BPU have offered no evidence to rebut its showing that the Communities are subject to effective competition.³⁹ Contrary to the Ratepayer Advocate’s claim, Cablevision asserts that there is no basis for concluding that the homes passed tests proffered by the Ratepayer Advocate would be more accurate than Census data.⁴⁰ Cablevision argues that these tests based on estimates, projections, and tax assessments do not provide an accurate and reliable determination of the number of households in the Communities.⁴¹

11. Cablevision also argues that there is no requirement that a single family home with more than one dish be counted as an additional household.⁴² Cablevision points out that the Commission has stated that it has presumed that Congress did not intend “households” to have a different meaning than in the 1990 Census.⁴³ Cablevision notes that there could be many reasons why a single-family household would have more than one dish and these reasons would not require an adjustment of the Census household data. Cablevision states that in the early days of DBS, a separate dish was required in order for a household to watch different programming because the presence of a separate receiver was not enough.⁴⁴ Cablevision also asserts that once a dish is placed on a rooftop or secured to the side of a

³³ *Id.* at 6. As an example, the Ratepayer Advocate states that the count for Tract 314 shows that there are three single family homes with more than one dish, one two-family home with more than two dishes and two three-family homes with more than three dishes. *See also* Rivera-Benitez Certification at ¶ 6.

³⁴ Rivera-Benitez Certification at ¶ 6.

³⁵ Ratepayer Advocate Opposition at 6 and Rivera-Benitez Certification at ¶ 6.

³⁶ Ratepayer Advocate Opposition at 11.

³⁷ *Id.* at 14.

³⁸ Cablevision Reply at 5.

³⁹ *Id.* at 9.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 13.

⁴³ *Id.*, citing *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Buy-Through Prohibition*, 9 FCC Rcd 4316 (1994). Accordingly, a “household” for both Census and effective competition purposes is an occupied housing unit. A housing unit is a house, an apartment, a mobile home, a group of rooms, or a single room occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall. *See* U.S. Bureau of the Census, Definition of Household, 2000 Census of Population.

⁴⁴ Cablevision Reply at 14.

house, some subscribers may be reluctant to remove the old dish when they change providers or upgrade to a new dish because they don't want to damage their roof or other property.⁴⁵

12. Cablevision also argues that even if the Commission were to give credence to the household numbers as suggested by the Ratepayer Advocate, Cablevision would still be subject to effective competition.⁴⁶ Cablevision submits that its original household numbers for the Communities did not exclude seasonal households as provided for under the Commission's rules.⁴⁷ Further, Cablevision argues, that at a minimum, its submitted Census household figures also should reflect the vacancy rate for the Communities and those households that may have been demolished since 2000.⁴⁸ Therefore with household adjustments based on the vacancy rate and the removal of seasonal and demolished homes, Cablevision argues that it would still be subject to effective competition in the Communities.⁴⁹

13. In addition, Cablevision argues that there is no basis for adjusting the DBS subscriber data provided by SBCA based on the information offered by the Ratepayer Advocate.⁵⁰ Cablevision argues that the visual inspection of satellite dishes conducted by the Ratepayer Advocate should be rejected because it is not a reliable way to measure DBS subscribership.⁵¹ Cablevision contends that many dish owners seek to hide their dishes from plain view for aesthetic and property value reasons.⁵² In addition, Cablevision argues that the visual inspection is only based on three Census tracts of land in Elizabeth, yet there are more than 24 Census tracts in Elizabeth.⁵³ Moreover, Cablevision argues that while the Ratepayer Advocate asserts that these three tracts are representative of the entire Community, there is no evidence to suggest that this 12 percent figure is an appropriate sampling of DBS subscribership in Elizabeth.⁵⁴

14. In its additional comments,⁵⁵ the Ratepayer Advocate disputes the household numbers submitted by Cablevision in its reply arguing that the Commission's rules do not allow for factoring in vacancy rates or demolished homes.⁵⁶ The Ratepayer Advocate also argues that its prior submissions are corroborated because data contained in The New Jersey Construction Reporter shows that housing growth in the Communities far exceeds the number of demolitions in every year since 2000.⁵⁷

15. Cablevision disputes the Ratepayer Advocate's assertion that there is no provision in the

⁴⁵ *Id.*

⁴⁶ *Id.* at 16.

⁴⁷ *Id.*; *see also* 47 C.F.R. § 76.905(c).

⁴⁸ *Id.* at 16-17. Cablevision notes that the 2000 Census data provides a vacancy rate for each of the communities. *See* Petition at Exhibit 6. Cablevision also states that its data regarding demolished homes was obtained from the New Jersey Department of Community Affairs. *See* Cablevision Reply at n.55, Exhibit 4.

⁴⁹ *Id.* at 17-18. Making those adjustments, Cablevision asserts that DBS penetration in Montvale would be 15.18%; in Elizabeth 17%; and, in West Milford 15.59%. *Id.* at 18.

⁵⁰ *Id.* at 18.

⁵¹ *Id.* at 19.

⁵² *Id.*

⁵³ *Id.* and Exhibit 5.

⁵⁴ Cablevision Reply at 19.

⁵⁵ *See supra* nn.5-6.

⁵⁶ Ratepayer Advocate Comments at 3.

⁵⁷ *Id.* and Exhibit A.

Commission's rules to factor in a vacancy rate to the household data submitted by the Ratepayer Advocate.⁵⁸ Cablevision argues that the Commission has clearly stated that households for purposes of effective competition determinations reflect only occupied housing units.⁵⁹ Cablevision argues that any attempt by the Ratepayer Advocate to extrapolate household data from the number of new structures constructed or the number of building permits issued does not demonstrate that the building is occupied full time and would qualify as a household.⁶⁰ Cablevision asserts that its examination of The New Jersey Construction Reporter shows that none of the household definitions meets the Commission's requirements.⁶¹

16. With regard to Cablevision's reliance on 2000 Census data, we find that the arguments of both the BPU and the Ratepayer Advocate are without merit. The Commission has held consistently that 2000 Census data is a sufficiently reliable means for making effective competition determinations.⁶² The Commission previously rejected arguments similar to those made by the Ratepayer Advocate and the BPU that the use of 2000 Census household data to determine the aggregate DBS penetration within a Community is inappropriate because an area is rapidly growing and 2000 Census data is not reflective of the most current data.⁶³ In that instance, the Commission affirmed that for effective competition purposes it is appropriate to utilize the U.S. Census Bureau's data.⁶⁴ We also reject the assertions of the Ratepayer Advocate and the BPU that there is a mismatch between the Census household data and the DBS penetration data. The Commission has relied upon Census data in effective competition cases where the differential between the data of the Census information and the date of the petition was greater than five years.⁶⁵ We disagree with the Ratepayer Advocate's interpretation of prior effective competition cases as standing for the proposition that the Commission has rejected the use of what the Ratepayer Advocate terms as stale data in making effective competition determinations.⁶⁶

17. The Ratepayer Advocate also has provided no basis for relying upon its alternative household numbers based upon Certificate of Occupancy ("CO") and tax assessment data. The

⁵⁸ Cablevision Reply to Ratepayer Advocate Comments at 4.

⁵⁹ *Id.*, citing *Tel-Com, Inc. Petition for Revocation of the Certification of the West Virginia Cable Television Advisory Board to Regulate Basic Cable Rates*, 11 FCC Rcd 9153, n.17 (1996).

⁶⁰ Cablevision Reply to Ratepayer Advocate Comments at 4.

⁶¹ *Id.*

⁶² See, e.g., *Cablevision of Raritan Valley, Inc. et al.*, 19 FCC Rcd 6966 (2004); *Texas Cable Partners*, 17 FCC Rcd 6373 (2002); *Falcon Cable Systems*, 17 FCC Rcd 4648 (2002).

⁶³ See *Mediacom Minnesota LLC*, 18 FCC Rcd 12768, 12770 (2003).

⁶⁴ *Id.* at 12771.

⁶⁵ See, e.g., *Jones Intercable, Inc.*, 15 FCC 7254, 7256 at n.12 (2000); *Tel-Com, Inc. Petition for Revocation of the West Virginia Cable Television Advisory Board to Regulate Basic Cable Rates*, 11 FCC Rcd 9153, 9159 at n.36.

⁶⁶ In the *Charter Communications* case cited by the Ratepayer Advocate, the Commission only required Charter to submit updated household information because it found that Charter relied on 1990 Census data when 2000 data was available. Because Charter later submitted the most recent Census data available, *Charter Communications* does not support the Ratepayer Advocate's arguments in this case. See *Falcon Cable Systems Company II, a California Limited Partnership, d/b/a Charter Communications*, 17 FCC Rcd 4648, 4650 (2002) ("*Charter Communications*"). We also disagree that either *Texas Partners* or *Texas Cable* applies here. In those cases, the Commission allowed for incorporation of a growth factor to the Census data to establish current household numbers, but did not require the submission of that information. Only when the cable operator filed data different than the most recent Census data did the Commission require the operator to demonstrate the accuracy and reliability of that data. See *Texas Cable Partners (City of Alvin et al.)*, 16 FCC Rcd 4718, 4721 at n.29 (2001) ("*Texas Partners*"); *Texas Cable Partners (in Certain Texas Communities)*, 16 FCC Rcd 4886, 4888 (2001) ("*Texas Cable*").

Commission has rejected similar arguments presented by the Ratepayer Advocate that COs are a reliable indicator of an increase in the number of households in a community.⁶⁷ In this case, the Ratepayer Advocate has not made clear that the COs issued in the Communities represent the addition of new households. In fact, the issuance of a CO may indicate a net decrease in the number of households within a community. In that regard, a CO may be issued after an older multiple dwelling unit has been torn down and replaced with a newer building, thereby representing no net household increase. Likewise, no net household increase is reflected when COs are issued after an addition or improvement to a property has been made, when title to property is transferred, or when a CO is issued in order for a homeowner to secure refinancing on a property. As for tax assessments, there is no correlation between the number of properties located in a community for tax purposes and the number of households in the community. As the Commission has noted, the term households for effective competition purposes reflects only occupied housing units.⁶⁸ Tax assessments take all property into account and are not limited to occupied housing units. As we have stated, we regard the use of the number of taxable residential properties in a franchise area to be unreliable data for effective competition purposes because a property is taxed whether or not it is occupied.⁶⁹

18. We also find that the Ratepayer Advocate has not provided any evidence to convince us that the data compiled by Claritas, Inc. is more reliable than the Census data normally utilized by the Commission. This data appears to be based on projections or estimates from Census data that utilizes a variety of sources to indicate changes following the Census.⁷⁰ The Ratepayer Advocate does not provide a sufficient explanation of the sources used or the methodology employed in calculating submitted data.⁷¹ We acknowledge that the household update estimates obtained from Claritas may serve as more accurate household figures for determining effective competition in the communities at issue. However, the record does not adequately reflect a complete and thorough explanation of the methodology that Claritas used to arrive at these estimates. We cannot blindly assume that such estimates are superior to the 2000 Census information submitted by Cablevision. Without more, we cannot conclude that there is any basis for determining that those estimates should be substituted for the most recent Census data.

19. We do not agree that the SBCA subscribership data submitted by Cablevision warrants

⁶⁷ *Cablevision of Raritan Valley, Inc. et al.*, 19 FCC Rcd 6966, 6968 (2004). In that case, the Commission noted that COs do not automatically indicate that a residence is occupied; that a CO may actually be a re-issuance of a lost certificate; and, the issuance of a CO may indicate a diminution of the number of households in a franchise area – such as when a small apartment building is demolished and replaced with a single family home. *Id.* at 6968; *see also Marcus Cable Associates. LLC d/b/a Charter Communications (Order on Reconsideration)*, 18 FCC Rcd 9649, 9652 (2003). In that case, the Commission stated that with respect to residences recently granted certificates of occupancy, it did not believe that local inspections and permits indicating that a building was ready for occupancy demonstrated that the building was in fact occupied full time such that it would qualify as a household under the Census definition. *Id.* at 9652.

⁶⁸ *See supra* n.59.

⁶⁹ *See Cablevision of Raritan Valley, Inc.*, 19 FCC Rcd at 6968.

⁷⁰ Ratepayer Advocate Opposition at Exhibit E.

⁷¹ Cablevision submits that while the Ratepayer Advocate does not provide detail on the sources of estimates used or the methodology employed to garner them, its review of the Claritas' website indicates that it relies upon information supplied by the National Planning Data Corporation, Donnelly Marketing Information Services, and the National Decision Systems, all demographic data firms. Cablevision further states that estimates are based on Claritas own data and on an undefined term called "Market Statistics." *See* Cablevision Reply at 15 and Exhibit 3. Based on this information, it appears that Claritas primarily uses data from other demographic firms or sources in order to arrive at its own estimates. There is nothing to discount that the information from these firms or sources may then, in turn, be based on estimates from other sources. We therefore cannot conclude that Claritas data is more reliable or accurate than the most recent Census data.

adjustment based on Ratepayer Advocate submissions. We agree with Cablevision that visual observation of DBS dishes is not a reliable method of measuring DBS subscribership because of dish owners' desires to conceal dish visibility for aesthetic and property value reasons. There is also no basis to accept as reliable Ratepayer Advocate's visual inspection of dishes on only three out of more than 24 Census tracts in Elizabeth.⁷² Aside from its own assertions, the Ratepayer Advocate provides no evidence to prove that these three tracts are representative of the entire Community. The Commission has consistently relied upon DBS subscribership information provided by organizations such as SkyTrends, Media Business Corporation, and SBCA.⁷³ Moreover, the Commission has specifically stated that it has discerned no rationale that leads it to conclude that anecdotal visual observations of DBS dishes are inherently more reliable than commercially available DBS subscribership reports compiled from data obtained directly from the DBS providers.⁷⁴

20. We note, however, that the Media Bureau did request additional information from Cablevision regarding its SBCA submission.⁷⁵ The Bureau requested that Cablevision supplement its petitions to provide the list of zip codes used by the SBCA to determine the number of DBS subscribers in Montvale, Elizabeth and West Milford.⁷⁶ Cablevision filed a Supplement containing that information.⁷⁷ The New Jersey Division of Rate Counsel ("Rate Counsel") filed a response to Cablevision's Supplement.⁷⁸ Cablevision filed a response to Rate Counsel's filing.⁷⁹

21. Rate Counsel argues that the additional SBCA information submitted by Cablevision is unreliable. As an example, Rate Counsel asserts that Cablevision serves the entire City of Elizabeth which, according to the United States Postal Service, spans four zip codes – 07210, 07202, 07206 and 07208 (a fifth zip code, 07207, pertains to P.O. Box addresses).⁸⁰ However, according to Rate Counsel, Cablevision's Supplement does not include any information relative to 07206 or 07208 and provides no explanation regarding the absence of that information.⁸¹ In addition, Rate Counsel asserts that Saddle River Borough has a zip code of 07458 and is listed as a zip code under Montvale.⁸² Rate Counsel contends, however, that Montvale is in the Cablevision Rockland/Ramapo system and Saddle River is

⁷² See Cablevision Reply, Exhibit 5 (Census Tract Outline Map – Census 2000).

⁷³ See *Texas Partners*, 16 FCC Rcd 4718, 4721 (2001) (SkyTrends data); *Adelphia Cable Communications*, 20 FCC Rcd 4979, 4981 (2005) (Media Business Corporation); *BeamSpeed, LLC*, 19 FCC Rcd 12836, 12837 (2004) (SBCA).

⁷⁴ See *Cablevision of Paterson d/b/a Cablevision of Allamuchy, N.J. et al.*, 17 FCC Rcd 17239, 17243 (2002).

⁷⁵ See Letter to Christopher J. Harvie, Esq. *et al.* from Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau (February 23, 2007).

⁷⁶ *Id.*

⁷⁷ See Supplement to Petition for Determination of Effective Competition filed March 22, 2007. Cablevision provided ZIP+4 records for each of the communities on separate exhibits that identified the applicable franchise area, the CUID number, and the CSR number assigned by the Commission.

⁷⁸ See Response on Behalf of the The New Jersey Division of Rate Counsel to the Evidentiary Supplement by Cablevision filed May 21, 2007. Rate Counsel filed an Opposition against the Petitions under the title of the New Jersey Division of the Ratepayer Advocate.

⁷⁹ See Letter to Marlene H. Dortch, Secretary, FCC from Christopher J. Harvie, Esq. and Angela F. Collins, Esq. filed June 6, 2007 ("Cablevision June 6, 2007 Letter").

⁸⁰ Rate Counsel Response at 3 and attached USPS zip code matches for Elizabeth, NJ.

⁸¹ Rate Counsel Response at 3.

⁸² *Id.*

not.⁸³ Moreover, Rate Counsel argues that the listing for West Milford includes zip code 07403 and according to the Postal Service is assigned to Bloomingdale.⁸⁴ According to Rate Counsel, however, Bloomingdale falls under the Cablevision of Oakland system and not Cablevision of Warwick.⁸⁵

22. Cablevision responds that it inadvertently excluded the Zip+4 codes for 07206 and 07208 in Elizabeth and submits a corrected exhibit.⁸⁶ Cablevision asserts that the only difference between the corrected exhibit and the one submitted with its Supplement is the Zip+4 codes associated with 07206 and 07208, and these are zip codes that Rate Counsel acknowledges should be included in computing DBS subscribership counts for Elizabeth. Cablevision further asserts that the exclusion or the inclusion of these zip codes has no effect on the household count for Elizabeth because that number is based on 2000 Census data.⁸⁷ Cablevision also counters that it did not wrongly include 07458 in the listing of zip codes for Montvale. Cablevision submits a map demonstrating that the two Zip+4 listings provided for 07458 are contained within the Montvale franchise area.⁸⁸ Likewise, Cablevision also submits a map demonstrating that the Zip+4 listing questioned by Rate Counsel in the West Milford franchise area was properly included.⁸⁹ We therefore find no basis for disputing the penetration figures computed by Cablevision in its petitions.

23. In view of the foregoing, we are satisfied that the 2000 Census data and the SBCA information submitted by Cablevision is sufficiently reliable for making the necessary effective competition determinations in these proceedings. The Census data reflects occupied housing units as required.⁹⁰ In that regard, we find it unnecessary to rely upon Cablevision's revised submissions based on the Ratepayer Advocate's revised household counts and adjusted by Cablevision based on vacancy rates, seasonal housing and demolished housing. Additionally, we find none of the supplemental data submitted by the Ratepayer Advocate to be persuasive or reliable in altering our findings. Accordingly, based upon the aggregate DBS subscriber penetration levels as reflected in the Communities at issue, calculated using 2000 Census household data, we find that Cablevision has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted Communities. Based on the foregoing, we conclude that Cablevision has submitted sufficient evidence demonstrating that their cable systems serving those Communities are subject to competing provider effective competition.⁹¹

24. Accordingly, we deny requests for discovery in this matter. The Commission is entitled to rely on the presumptive accuracy of Census data and the DBS penetration data obtained from independent sources as previously discussed. Cablevision satisfied its evidentiary burden in these cases and neither the Ratepayer Advocate nor the BPU adequately refuted the submitted evidence. We find no reason to conduct further proceedings in this matter in order to resolve the alleged factual discrepancies argued by the opposing parties. We also reject any arguments calling for a "complete when filed" rule.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Cablevision June 6, 2007 Letter at 2.

⁸⁷ *Id.* at n.6.

⁸⁸ *Id.* at 2 and Exhibit 1 (Declaration of Pinna Gallant, Media Business Corp., ¶ 4 ("Gallant Declaration") and Attachment A (map of Montvale).

⁸⁹ *Id.* at 2 and Gallant Declaration ¶ 5 and Attachment B (map of West Milford).

⁹⁰ *See supra nn.* 43 and 59.

⁹¹ Because we find that Cablevision is subject to competing provider effective competition in its West Milford franchise area, we need not address its alternative argument with regard to the LEC effective competition test.

Cablevision's petitions were complete when filed as they incorporated complete and accurate information as discussed above and affirmed by our previous decisions. We disagree with Rate Counsel that the filing of Cablevision's Supplement containing further zip code information, pursuant to the Commission's request, is clear evidence that the petitions were not complete when filed.⁹² Because Rate Counsel was given the opportunity to comment on Cablevision's Supplement, Rate Counsel was not prejudiced in any way by the filing of the Supplement. We also believe that the adjudication of a specific effective competition case is an inappropriate forum to impose such a rule that has broad implications for all effective competition cases.⁹³

III. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that the petitions filed by Cablevision of Rockland/Ramapo, Inc., CSC TKR, Inc. d/b/a Cablevision of Elizabeth, and Cablevision of Warwick LLC for a determination of effective competition in Montvale, Elizabeth and West Milford, New Jersey **ARE GRANTED**.

26. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Cablevision of Rockland/Ramapo, Inc., CSC TKR, Inc. d/b/a Cablevision of Elizabeth, and Cablevision of Warwick LLC in the affected Communities **ARE REVOKED**.

27. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.⁹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

⁹² See Rate Counsel Response at 2-3.

⁹³ We agree with Cablevision that it is inappropriate to change procedural filing requirements in these cases at this point in time. Cablevision Reply at n.23. See e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237, 6246 (2001) (noting that "narrowly focused adjudications are often inappropriate forums for the considered resolution of industry-wide questions of general applicability").

⁹⁴ 47 C.F.R. § 0.283.